



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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Memorandum

To: John Rogers, Acting Director
U.S. Fish and Wildlife Service

From: Brooks Yeager, Deputy Assistant Secretary
Policy, Management and Budget

Subject: Allocation for, and Policy and Procedure for Use of the Natural Resource Damage Assessment and Restoration (NRDAR) Fund for Advance Funding for Assessment Costs Under Memoranda of Agreement With Responsible Parties (FY 1997-02)

The Deputy Assistant Secretaries Advisory Group on Environmental Policy and Compliance (DAS Group) has agreed on implementation of a procedure for agreements with Responsible Parties (RP) to fund Natural Resource Damage Assessment activities. These agreements may involve either deposit of RP monies provided in advance of NRDA work, or use of NRDAR Fund monies with a binding agreement by RPs for repayment. Where RPs agree to provide repayment of assessment expenditures made by the Department, an allocation from the NRDAR Fund for FY 97 in the amount of \$200,000 will provide initial funding for conduct of NRDA assessment activities subject to Memoranda of Agreement (MOA) which establish a legally binding commitment between the Department and RPs.

The attached issue paper, prepared by a workgroup chaired by the Office of Environmental Policy and Compliance with members from Office of Policy Analysis; involved bureaus including Fish and Wildlife Service, National Park Service, and Bureau of Land Management; Office of the Solicitor; and budget and finance staff, outlines the program policies and procedures. The attachments include a sample MOA, accounting procedures and guidelines to facilitate access to funds designated for this purpose in the NRDAR Fund and ensure proper documentation, and procedures to minimize the amount of NRDAR Fund monies required while assuring compliance with the Anti-Deficiency Act pending receipt of payments from RPs. Examples of request forms and notices of anticipated deposit into the NRDAR Fund are also included.

Guidance will be developed by the workgroup under the NRDAR Fund Task Force, and in consultation with the Fish and Wildlife Service (FWS) Budget Office. Guidance will include a model enforceable MOA for RP funding of Departmental assessment activities, instructions to requesting Bureaus for both deposit of RP monies provided in advance of NRDA work, and procedures for using the designated NRDAR Fund monies with promised RP repayment. The Department will encourage RPs to pay monies to the NRDAR Fund in advance, in preference to arrangements for them to repay the Fund after assessment costs have been incurred. Advance

payments reduce or eliminate the need to spend other Fund monies "up front" for assessment activities, pending repayment. The Department's policy is to obtain agreements to obtain advance payments from RPs wherever possible.

For support of assessment activities under repayment agreements, procedures under which allocations will be disbursed and repayment accomplished are described in the attached program description. In brief, the procedures provide the following:

- Trustees approach the RP for NRDA funding - the RP agrees to fund the trustee efforts - either by advance of funds or by quarterly repayment of Departmental expenditures.
- Under the repayment option, establish with the RP quarterly payment arrangement.
- Trustees and RP sign enforceable MOA.
- NRDA Fund Repayment request form is filled out and forwarded with a copy of the signed MOA to the Bureau representative on the NRDA Fund Task Force who will sign the form and forward to NRDA Fund Manager (FWS Budget). The Fund Manager certifies that adequate uninvested monies to cover the amount needed are available in the NRDA Fund under this allocation. The Fund Manager signs the request form and forwards to the Chair of the NRDA Fund Task Force. The Chair of the NRDA Fund Task Force, as authorizing official, reviews the request to assure it is in compliance with these policies, and signs the form authorizing disbursement of the specified funds.
- The original form is sent back to NRDA Fund Manager, with copies to the other Task Force members.
- Following disbursement of funds to the requesting Bureau, standing NRDA Fund policy and internal bureau financial management procedures apply.

Funds made available under these procedures for any single incident or site where assessment activities are undertaken are limited to a maximum obligation of \$50,000 at any one time. Under the quarterly repayment requirement, as repayments are received in the fund from the RP, further disbursements may be made from the Fund to support that assessment, up to the limit of no more than \$50,000 being obligated for any one assessment at one time. Where there are multiple assessments being funded, they are also subject to the overall limit of \$200,000 to be used for this purpose at any one time from the Fund.

Please note that funding is intended to support the damage assessment activities indicated in support of the Department's litigation strategy. Any changes in litigation strategy may change and/or terminate the activities started. Any monies not expended for agreed-upon activities, whether due to such changes, to savings over estimated costs, or to other reasons, shall be returned to the Fund as soon as possible to be available for allocation to other priority sites.

As the Fund financial manager, the FWS issued a memorandum dated May 11, 1992, describing interim procedures for the inter-bureau transfer, allocation, and

reporting requirements of the Fund. All bureaus are to refer to these procedures as well as their own for accounts and record keeping appropriate to support any subsequent cost recovery actions, as well as to respond to Congressional and public scrutiny of activities undertaken and expenses claimed for the damage assessments actions.

Attachments